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United States General Accounting Office
Washington, DC 20548

February 6, 2002

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable John J. LaFalce
Ranking Member
Committee on Financial Services
House of Representatives

The Honorable Paul E. Kanjorski
Ranking Member, Subcommittee on Capital Markets,
Insurance, and Government Sponsored Enterprises
Committee on Financial Services
United States House of Representatives

Subject: GAO Review of the Securities and Exchange Commission's Disgorgement
Collection, Waiver, and Distribution Processes

This letter confirms our commitment to study the Securities and Exchange Commission's disgorgement collection, waiver, and distribution processes based on your letters of March 21, 2001 and July 30, 2001, to the Comptroller General. Based on discussions with your staff on January 11, 2002, we will complete our work and issue a written product to you by July 26, 2002. The enclosure sets forth the understanding reached with your staff on the key aspects of the study.

We look forward to working with you and your staff on this assignment. If you have questions, you may contact me on (202) 512-9073 or my Assistant Director, Cody Goebel, on (202) 512-7329.

Richard J. Hillman
Director, Financial Markets and
Community Investment

Enclosure

Terms of the Work

Objectives/Key Questions

Our review of the Security and Exchange Commission's (SEC) disgorgement collection, waiver, and distribution processes will address the following questions.

- (1) What are SEC's current policies for collecting, waiving, and distributing disgorgement, and how do they respond to recommendations in GAO's 1994 Report?
- (2) What factors have contributed to the significant amounts of uncollected disgorgement?
- (3) What procedures and management controls does SEC have in place to manage and to assess the effectiveness of disgorgement collection, waiver, and distribution efforts?
- (4) How do SEC's disgorgement collection process compare to those used by other regulatory, law enforcement, or private collection agencies?

Scope

Our review will focus on SEC's collection and distribution efforts from fiscal years 1995 through 2001 and on SEC's waiver process for fiscal year 2001.

Methodology

To address the first research question, we will describe SEC's current processes for collecting, waiving, and distributing disgorgements. Using SEC's database of ordered disgorgements, we will also determine the amount and percentage of ordered disgorgement that has been collected, waived, and distributed by SEC or court-appointed receivers from fiscal years 1995 through 2001. In addition, we will interview staff and review guidance to determine whether SEC has addressed previously reported management control problems for governing its disgorgement efforts.

To address the second research question, we will identify the primary reasons for uncollected disgorgement. Specifically, we will identify factors beyond SEC's control as well as those factors within the agency's control which explain why disgorgement goes uncollected. To identify these factors, we will conduct interviews with key officials and conduct a file review of a judgmental sample of cases with disgorgement ordered during fiscal years 1998 through 2000.

To address the third research question, we will provide an overview of the current controls and procedures used by SEC to manage its disgorgement collection, waiver, and distribution processes. For the collection and distribution process, we will review written procedures

and guidance that ensure staff use procedures. We will also conduct interviews with key agency officials when guidance or procedures do not exist. For the waiver process, we will report on whether SEC has implemented the Inspector General's recommendations that suggest the use of various investigative techniques for identifying hidden assets. We will conduct a file review of a judgmental sample of cases with waivers granted in FY 2001 to determine whether these investigative techniques have been used on the selected cases.

For the final question, we will compare SEC's collection procedures with those at other federal agencies as well as private collection agencies. We will interview officials at other federal agencies and private collection agencies to identify potential collection procedures and techniques that SEC should consider implementing in the future.

We will conduct our work in accordance with generally accepted government auditing standards.

Product Type

We will issue a letter report and will obtain comments from SEC on a written draft prior to issuance.

Product Delivery Date

The report will be issued by July 26, 2002.

Special Conditions

None.

Reporting on Job Status

We will be prepared to offer interim briefings as requested.